

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-13719
Non-Argument Calendar

D.C. Docket No. 9:15-cr-80091-DMM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BARTOLO GOMEZ-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(March 30, 2016)

Before WILSON, MARTIN and ROSENBAUM, Circuit Judges.

PER CURIAM:

Bartolo Gomez-Martinez appeals his 16-month sentence for illegally re-entering the United States after removal in violation of 8 U.S.C. §§ 1326(a) and (b)(1). Gomez-Martinez argues that the enhancement of his sentence based upon a conviction that was not alleged in the indictment violates the Fifth and Sixth Amendments.

We review constitutional sentencing issues de novo. United States v. Harris, 741 F.3d 1245, 1248 (11th Cir. 2014). The Supreme Court has held that the fact of a prior conviction does not need to be charged in the indictment or put to a jury under the Constitution. Almendarez-Torres v. United States, 523 U.S. 224, 226–27, 118 S. Ct. 1219, 1222 (1998). In Alleyne v. United States, ___ U.S. ___, 133 S. Ct. 2151 (2013), the Supreme Court held that any fact that increases a defendant’s mandatory minimum sentence is an element of the crime that must be submitted to a jury. Id. at 2155. However, Alleyne explicitly stated that it was not revisiting the “narrow exception to this general rule for the fact of a prior conviction.” Id. at 2160 n.1. This Court has held that Almendarez-Torres remains the law of this Circuit in the wake of Alleyne. Harris, 741 F.3d at 1250.

The district court’s enhancement of Gomez-Martinez’s sentence did not violate his constitutional rights. Gomez-Martinez concedes that Almendarez-Torres remains binding precedent. The government was not required to charge

Gomez-Martinez's prior conviction in his indictment for the conviction to be a basis for enhancing his sentence. We therefore affirm Gomez-Martinez's sentence.

AFFIRMED.